UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,470	02/07/2001	Cheree L. B. Stevens	ADV12 P300A	4695

277 7590 11/26/2003

PRICE HENEVELD COOPER DEWITT & LITTON
695 KENMOOR, S.E.
P O BOX 2567
GRAND RAPIDS, MI 49501

EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/778,470	STEVENS ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 July 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *49-111* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *49-111* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Claims 49-111 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the response filed July 8, 2003, applicant submits new claims. Claims 49, 92, 111 contain the limitation " substantially free of starches made from plants crossbred or modified to contain either the dull sugary 2 genotype or the amylose extender dull genotype". This limitation does not have support in the specification. The specification does not disclose anything about the coating being free from this starch. The amount of potato starch in claim 82 is not supported by the specification.

Claims 49,92 and 111 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 49, the language " substantially free of corn starch " is indefinite because the scope of the claim can not be ascertained. It is not known how much corn starch can be present and the specification does not define what " substantially free " mean. Page 8 of the specification discloses 10% or even more of cornstarch ingredient may be used. Thus, it is not clear what " substantially free" constitute.

Claims 92 and 111 have the same problem as claim 49. Additionally, claim 111 is unclear in that it is not known what method applicant is claiming because the claim only recites " a method comprising"; a method of what?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 49-51, 55-57, 61-63, 73-75, 77-79, 81-85, 88-89, 90, 92-98, 111 are rejected under 35 U.S.C. 102(e) as being anticipated by Horn et al. (6080434)

Horn et al disclose coat formulations which provide improved functionality to french fry products. The coating comprises at least 30% by weight of a first cross-linked starch selected from the group consisting of potato and tapioca, from 5-20% low soluble dextrin, from 5-45% rice flour, .1% gum and leavening agents. Optional minor ingredients such as maltodextrins, dextrins, microcrystalline cellulose, whey, dried egg etc... can be added. Leavening agents are added at sodium bicarbonate of about .9 parts soda to 1.1 parts SAPP. The dextrins can be obtained from sources such as potato, corn and tapioca. The rice flours include long grain, medium grain or waxy rice. The process of producing the French fries includes the steps preparing potato strips,

blanching the strips, treating the blanch strips in a brine solution, drying the strips, coating the strips with the aqueous slurry, draining the coated strips and parfrying the strips. The potato strips are then frozen until they are prepared for final consumption. The potato strips are cooked by finish frying or baking. The strips are characterized by a crisp outer layer, a moist tender interior and improved flavor qualities. (see columns 3-7 and the examples)

The reference discloses all the limitations of the above cited claims. With respect the limitation of " substantially free of corn starch", it is not known what amount of corn starch is covered by such language. The amount of corn starch disclosed by Horn et al can be 2%; this amount is very small in comparison to other ingredients. Thus, it is interpreted the Horn et al formulation is substantially free of corn starch. The language " substantially free of corn starch" means some corn starch is present. The specification discloses 10 or more can be added. The amount disclosed by Horn et al is smaller than this amount. Horn et al do not disclose starch having the dull sugary 2 genotype or the amylose extender full genotype. The ranges of dextrin and rice flour disclosed in the reference gives the ratio as claimed.

Claims 52-554,58-60, 64-72, 76,80,86-87,91,99-110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al.

Horn et al do not disclose the potato starch is low-amylose content potato starch, the amount of color agent, adding salt and sugar, high solubility dextrin, the amount of dry composition, applying the coating composition as a dry mix, the holding time, cooking after coating without freezing

It would have been obvious to choose the solubility depending on the type of coating mix. For example, if a batter is made, it would have been obvious to choose high solubility dextrin so that it can dissolve quickly or if a dry mix is made, it would have been obvious to choose low solubility dextrin so that it is not affected easily by moisture. It would also have been to choose low amylose or high amylose starch depending on the property wanted. The two components in starch are amylose and amylopectin. Each component gives different property to the starch. It would have been obvious to use starch that is high in one component or the other depending on the property desired. Applicant has not shown any criticality or unexpected result in the claimed low amylose starch. It would also have been obvious to add sugar, salt and coloring to the coating composition to enhance the taste and appearance; the amount to be added depends on the taste and appearance desired. It would have been obvious to one skilled in the art to determine the amount of water to form a slurry which would give the most optimum coating; this can readily be determined through routine experimentation. It would have been obvious to apply the coating mix as a slurry or a dry mix depending on the thickness of the coating wanted. A slurry will give a thicker coating than a dry mix. When a dry mix is applied to the food substrate, it would have been obvious to moisten the food so that the dry mix can more easily adhere to the substrate. It would have been obvious to freeze or not freeze the product depending the time of consumption of the product after it is coated. If the product will be consumed in a short time after coating, then it is obvious freezing is not needed. It would have been obvious to hold the coated food for any amount of time depending on the time of consumption.

It would have been obvious to hold the food at ambient temperature or under heat depending on the temperature wanted in the product. If it is desired for the food not to be hot, it would have been obvious to hold it under ambient temperature or vice versa.

Applicant states in the remark that new pages 12-15 are submitted with the amendment; however, such pages are not found in the amendment.

Applicant's arguments with respect to claims 49-11 have been considered but are moot in view of the new ground(s) of rejection.

The declaration will not be addressed because all the references discussed in the declaration have not been used in the rejection. The remark directed at the Higgin et al reference is moot because it is no longer used in the rejection. The position taken by the examiner with respect to the Horn et al reference is set forth above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Tuesday, Wednesday and Friday. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

November 18, 2003

LIEN TRAN
PRIMARY EXAMINER
Group 1700